

DISTRICT CONSUMER DISPUTES REDRESSAL FORUM-I, U.T.

CHANDIGARH

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Consumer Complaint No : 411 of 2011
Date of Institution : 21.07.2011
Date of Decision : 04.05.2012

Sanjay Kumar Mishra, H.No. 1224, G/F, New HBC
Sector 19, Panchkula - 134113 [Haryana].

....Complainant

V E R S U S

[1] Public Information Officer [PIO], State
Information Commission (SIC), Punjab, SCO No.
84-85, Sector 17-C, Chandigarh - 160017.

[2] Chief Information Commissioner (CIC), State
Information Commission (SIC), Punjab, SCO No.
84-85, Sector 17-C, Chandigarh - 160017.

.....Opposite Parties

CORAM:	SH.P.D.GOEL	PRESIDENT
	SH.RAJINDER SINGH GILL	MEMBER
	DR.(MRS).MADANJIT KAUR SAHOTA	MEMBER

Argued by: Sh.S.M.Bhanot, Authorised Representative of complainant.
Sh.B.S.Sudan, Counsel for OPs.

PER DR.(MRS).MADANJIT KAUR SAHOTA MEMBER

Succinctly put, the Complainant, who is a RTI Activist, availed the service of the OPs to get information u/s 6(1) of the RTI Act, 2005, by paying a fee of Rs.10/- in the shape of I.P.O. No.89E 705710, with Application dated 02.12.2010 (Ann.A-3), but the Public Information Officer (for brevity 'PIO') did not provide him the information as requested at Para 1 & 4 of his RTI application, referred to above, within a period

It was alleged that non submission of information by public authority amounts to deficiency in service under the Consumer Protection Act, 1986. Hence, this complaint.

2] Notice of the complaint was sent to OPs seeking their version of the case.

3] The OPs in their joint reply pleaded that the information, as per the provisions of RTI Act, 2005, was furnished to the Complainant, within the statutory period of 30 days. There was no dereliction or deficiency on the part of the PIO and no provision of the RTI Act has been violated. The order of the PIO dated 5.1.2011 furnishing the information was challenged by the Complainant before the First Appellate Authority and thereafter, before the State Information Commission. The various statutory authorities i.e. the PIO, the First Appellate Authority and the Second Appellate Authority have done nothing more or less, than to pass order(s) under Sections 7 and 19 of the RTI Act. Unless these orders are challenged, in the very first instance, before a court of competent jurisdiction, no deficiency in service can be alleged or gone into. All other material contentions of the complainant were controverted.

Pleading that there was no deficiency in service on their part, a prayer has been made for dismissal of the complaint.

4] Parties led evidence in support of their contentions.

5] We have heard the authorized representative of the complainant and learned counsel for the OPs and have also perused the record.

6] In the present case, the complainant by exercising his right as a Consumer has challenged the deficient services provided by OPs, on the ground that they have not provided/supplied him complete information, as sought by him vide Application dated 2.12.2011 (Ann.A-3), for consideration, under a contract for personal services. The information sought & paid for, is a "service" under the Consumer Protection Act, 1986. Therefore, the cause of action under the C.P.Act does exist and is apparent in the wake of deficiency in service alleged by the complainant on the part of OPs.

7] On the contrary, the OP controverted the allegations that any misleading information was ever supplied to the complainant qua the information sought by him. It was contended that



neither the complainant is a consumer nor the dispute is a consumer dispute as per the Consumer Protection Act. Moreover, the remedy for the grievance of non-supply of correct or incomplete information, which is provided by way of filing Appeal, had already been availed of by the complainant. The OP further pleaded that a Public Authority was supposed to provide information, which is available on record and not to create any information as such, in order to supply the same to the applicant.

8] Going into the facts & circumstances, which gave rise to the present complaint and after perusing the documents placed on file as well as going through the provisions of Consumer Protect Act, 1986 (as amended upto date), provided qua redressal agencies, we determine that Section 3-A of the Consumer Protection Act defines that ***"The provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force."*** Henceforth, the institution of a complaint under the Consumer Protection Act is an alternative remedy which can be subsequently made available to the party, by virtue of the provisions of the Chapter II of the Act having been brought into force.

9] Moreover, the Consumer Forum is an alternative Forum established under the Consumer Protection Act and it is a social benefit oriented legislation exclusively for the consumers to protect their interest. The Act envisages legal frame work, where an ordinary consumer can fight and get his grievance redressed. Therefore, it also empowers the Quasi-Judicial bodies to observe the principles of natural justice and to give relief of a specific nature. [J.J.Merchant and others vs. Shrinath Chaturvedi, 2002 AIR (SC) 2931 & Lucknow Development Authority Vs. M.K.Gupta, 1994(1) CLT 1 (SC).]

10] More so, Section 2(1)(d)(ii) of the Consumer Protection Act stipulates as under:-

".....services for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any beneficiary of such services.....";

Section 2(1)(e) & (g) defines as under:-

(e) *"consumer dispute" means a dispute where the person against whom a complaint has been made, denies or disputes the allega-*

tions contained in the complaint.

- (g) "deficiency" means any fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance which is required to be maintained by or under any law for the time being in force or has been undertaken to be performed by a person in pursuance of a contract or otherwise in relation to any service;

11] Even otherwise, the burden of proof of such a defence shall lie on the person raising such defence, as is defined under Section 2(1)(r)(vii) of C.P.Act, which reads as under:-

- (vii) gives to the public any warranty or guarantee of the performance, efficacy or length of life of a product or of any goods that is not based on an adequate or proper test thereof;

Provided that where a defence is raised to the effect that such warranty or guarantee is based on adequate or proper test, the burden of proof of such defence shall lie on the person raising such defence;

12] In case of Regional Provident Fund Commissioner Vs. Shiv Kumar Joshi, 2000(1) PLR 655 (S.C.), it has been held that a member is a "Consumer" as the service is availed for the consideration.

13] While determining the maintainability, in Consumer Education and Research Society and others Vs. Ahmedabad Municipal Corporation and others, 2002(1) CLT 42 (SC) it has been held that whether the complainants are 'consumers' and or the complaint filed relates to deficiency in 'service' as defined in the Act, are matters for determination of which enquiry into facts is necessary and on the determination of the same, depends the maintainability.

14] Section 2(1)(b) of the Consumer Protection Act defines the "complainant" as under:-

(b) "complainant" means-


(i) a consumer; or

(ii) any voluntary consumer association registered under the Companies Act, 1956 (1of 1956) or under any other law for the time being in force; or

15] Section 2(1)(o) of the Consumer Protection Act reads as under:-

(o) "service" means service of any description which is made available to potential users and includes, but not limited to, the provision of facilities in connection with banking, financing insurance, transport, processing, supply of electrical or other energy, board or lodging or both, housing construction, entertainment, amusement or the purveying of news or other information, but does not include the rendering of any service free of charge or under a contract of personal service;

16] Furthermore, the Hon'ble National Consumer Disputes Redressal Commission, New Delhi, in case Dr.S.P.Thirumala Rao Vs. Municipal Commissioner, Mysore City Municipal Corporation, Revision Petition No.1975 of 2005, decided on 28th May, 2009, wherein it has been held that:-



"...Section 3 of the Consumer Protection Act, 1986 provides additional remedy in addition to the remedies provided under other Acts and it is not in derogation of any provisions of any law. The Consumer Fora has, therefore, jurisdiction to

entertain the complaint in respect of deficiency of service in the given facts especially when information sought was not furnished.....The applicant had paid a fee of Rs.10/- for seeking the said information. The case of the applicant would fall within the scope and ambit of Section 2(i)(o) of CP Act, which provides that service means service of any description which is made available to potential users, which include purveying of news or supplying of other information. The complainant had availed of the services under the said Act for consideration by paying fee and had sought information under the said Act, which was not supplied to him, which amounts to deficiency of service. The complainant, is thus, a consumer vis-à-vis information sought on payment under the said Act."

17] In view of the above sections of the Consumer Protection Act as well as cited case laws, it is held that the complainant is a consumer qua OPs while seeking information from them, for consideration, by paying fee of Rs.10/- under R.T.I. Act. Therefore, the objection raised by the OPs that complainant is not a consumer or this is not a consumer dispute do not

hold any water, as such the objection stands rejected.

18] Now, in order to determine the deficiency in service, as alleged by the complainant and to clinch the matter to come to the conclusion, the question mainly arises is whether the OPs have not supplied the required information to the complainant, as prayed by him in his prayer.

19] We have gone through the application of the complainant (Ann.A-3) vide which information was sought as well as the information supplied by OP-1 vide Ann.A-6.

20] The complainant in Ann.R-2, dated 7.2.2011 at Sr.No.1 of the application has stated that the information pertaining to Para NO.2 & 3 of his RTI Application dated 2.12.2010 is received and satisfied. Only the information requested at Para NO.1 & 4 has not been provided and still to be received from PIO. Whereas, the reply to Para No.1 & 4 of complainant's application (Ann.A-3), as supplied by OP-1 vide Ann.A-6, reads as under:-

"Para 1 & 4 Quasi-judicial orders passed by any State Information Commissioner is self explanatory order and its reasons for basis on



which it has been passed are contained in order itself. In case of Judicial or Quasi-judicial order, no separate reasons have to be given under Section 4(1)(d). The reasons have to be seen from judgment or order itself."

21] After going through the above reply, we do not find any ambiguity in it. The reply is clear in itself and do not conceal any information as alleged by the complainant.

22] Moreover, the complainant himself has admitted in his complaint at Para no.8 (Page-3) that *"I am not challenging any orders issued under RTI Act, as it bars u/s 23 of RTI Act, but my application is for Compensation due to "Deficiency in Service".* A mere verbatism or bald assertion of the complainant that there is a deficiency in service on the part of the OPs, is not sufficient to hold any deficiency. It was for the complainant to prove the deficiency in service, as alleged, on the part of OPs. But, since he has not been able to establish any deficiency in service by way of leading cogent/substantial and convincing evidence, thus no deficiency is attributed towards the OPs.

23] Evaluating the entire case from all angles as well as after analyzing the documents



placed on file by the complainant and that of the OPs, we have no hesitation in coming to the conclusion that the complainant has miserably failed to prove his case of alleged deficiency against the OPs. It can legitimately be said that there is no deficiency on the part of OPs. Therefore, the complaint being devoid of merit, must fail and the same is accordingly dismissed.

Certified copies of this order be sent to the parties free of charge. The file be consigned.



Sd/-

[Madanjit Kaur Sahota]
Member

Sd/-

[Rajinder Singh Gill]
Member

Sd/-

[P.D. Goel]
President

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